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IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

CIVIL DIVISION

CENTER FOR COALFIELD JUSTICE,	)	
WASHINGTON BRANCH NAACP,	)	
BRUCE JACOBS, JEFFREY MARKS,	)	
JUNE DEVAUGHN HYTHON,	)	
ERIKA WOROBEC, SANDRA MACIOCE,	)	
KENNETH ELLIOTT, AND DAVID DEAN,	)	
Plaintiffs,	)	
vs.	)	No. 2024-3953
WASHINGTON COUNTY BOARD OF	)	
ELECTIONS,	)	
Defendant.	)	
vs.	)	
REPUBLICAN NATIONAL COMMITTEE and	)	
REPUBLICAN PARTY OF PENNSYLVANIA	)	
Intervenors.		

SUMMARY

According to current law, the Washington County Board of Elections may decide to have a policy that does not notify qualified electors of an error on their mail-in packets and an opportunity to cure the error. As the law stands today, it is clear that only the legislature can address that specific issue. However, any policy the Washington County Board of Elections adopts must not go beyond the scope of "notice and opportunity to cure" by including provisions which violate a qualified electors' statutory rights. The current Washington County Board of Elections' policy violates an elector's right to challenge the canvass boards determination that there is an error on the mail-in packet.[1] The Washington County Board of Elections' policy also seemingly violates the law by preventing a qualified elector from casting a provisional ballot when the elector has not "voted".

[1] This Court uses the term mail-in packet to denote the entire item sent in by an elector including the ballot itself as well as the declaration envelope.

The Pennsylvania Supreme Court in *Pennsylvania Democratic Party v. Boockvar*[2], resolved the issue of "notice and opportunity to cure." The issues being addressed in this opinion are issues of first impression.

The procedural due process issue raised in this case is relatively straightforward. The legislature included a provision in the Election Code to allow electors the right to challenge the decision of the canvass board, an unelected body.[3] The policy adopted by the Washington County Board of Elections clearly did not give notice to any elector whose mail-in packet had an error and that their ballot would not be counted. The elector has a statutory right to challenge the decision of the canvass board. This challenge may not ultimately be successful; however, the elector still has a right to be heard by a fair and impartial tribunal. A governmentally appointed board does not have unfettered decision-making power to decide if a ballot will be cast and counted. The policy adopted by the Washington County Board of Elections clearly violated the statutory right to allow a person checks and balances against the government. Plaintiffs' motion for summary judgment is GRANTED on this issue.

The Washington County Board of Elections shall notify any elector whose mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects. The Washington County Board of Elections shall input the accurate status of the mail-in packet in the SURE system and provide the status to the elector if requested.

The next issue is whether a qualified elector whose mail-in packet has been segregated for a disqualifying error should be able to cast a provisional ballot. This issue is also addressed by Pennsylvania's Election Code. 25 P.S. § 3150.16(2) provides that "[a]n elector who requests a

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[2] 662 Pa. 39, 238 A.3d 345 (2020).
[3] 25 P.S. § 3157.

mail-in ballot and who is not shown on the district register as having **voted** may vote by provisional ballot."[4]

The legislature and current law do not define the word voted. Based on the current information this Court received, this Court finds an elector whose mail-in packet is segregated for a disqualifying error and whose ballot will not be counted, did not vote. Taking into consideration all of the information provided to this Court, the motions for summary judgment requested by all parties for this issue are DENIED. However, the plaintiff's request for an injunction is GRANTED. The Washington County Board of Elections shall indicate in each district poll register a person whose mail-in packet is being segregated as a person who has not voted, allowing the individual to submit a provisional ballot at the polls.

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[4] Emphasis added.

OPINION AND ORDER

AND NOW, this 23rd day of August, 2024, upon consideration of the cross-filed motions for Summary Judgment, the materials attached thereto, the Parties' Joint Stipulation of Facts, the deposition transcripts provided to the Court, and the arguments of Counsel, the Court ORDERS, ADJUDGES, and DECREES that the Plaintiff's Motion for Summary Judgment against Defendant Washington County Board of Elections is GRANTED in part and DENIED in part and Plaintiff's request for a permanent injunction is GRANTED in part. Defendant Washington County Board of Elections' and Intervenors Republican National Committee and Republican Party of Pennsylvania's Motions for Summary Judgment are DENIED. Defendant Washington County Board of Elections is hereby ordered to notify any elector whose mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects. The Washington County Board of Elections shall input the accurate status of the mail-in packet in the SURE system and provide the status to the elector if requested.

Defendant Washington County Board of Elections is hereby ordered to properly document in the poll books that the elector has not "voted" when an elector's mail-in packet is segregated for a disqualifying defect in accordance with 25 P.S. § 3150.16 (which will allow the elector the opportunity to cast a provisional ballot) and choose the most appropriate selection in the SURE system to reflect as such.

FACTUAL BACKGROUND

In 2023, the Washington County Board of Elections ("Board") adopted a "notice and cure" policy regarding mail-in packets cast in the 2023 primary and general elections.[5] In conjunction with this policy, voters who submitted defective packets were notified and permitted to "cure" their packets by going to the Elections office to correct a defective signature, request a replacement mail-in packet, or vote a provisional ballot on Election Day.[6] At a meeting on March 12th, 2024, the Board discussed whether it would continue this policy for the 2024 primary election.[7] On April 11th, 2024, after mail-in packets had already been sent out, the Board voted to enact a policy that does not provide any notice or cure for mail-in packets.[8] Despite public comment opposing the Board's decision and their awareness that 170 packets had already been segregated for disqualifying errors, the Board did not change their decision at an April 18th, 2024 meeting.[9]

In accordance with this policy, all packets received by the Elections office were marked in the State's SURE system as "record – ballot returned" regardless of whether they were segregated for disqualifying errors or not.[10] Electors who inquired about the status of their mail-in packet were told whether their packet had been received, but were not informed if their packet had been segregated.[11] The poll books on election day indicated only whether a voter had requested a mail-in packet and whether that packet had been received, but did not note whether the packet had a

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[5] Joint Stip. of Facts, ¶ 26.
[6] *Id.* ¶ 27-28.
[7] *Id.* ¶ 29.
[8] *Id.* ¶ 31, 33-35.
[9] *Id.* ¶ 36-39.
[10] *Id.* ¶ 41-42.
[11] *Id.* ¶ 44.

disqualifying error.[12] No voters whose packets had been set aside cast a provisional ballot on election day and no voter plaintiff contested their vote under 25 P.S. § 3157.[13]

On May 17th, 2024, the Board responded to a Right-To-Know-Law request which revealed 259 timely received mail-in packets were not counted due to various errors including "incomplete date[s]", "incorrect date[s]", lack of signature, ect.[14] These mail-in packets accounted for 2% of all timely-received mail-in packets and included both Democratic and Republican voters.[15] On July 1st, 2024, Plaintiffs filed their Complaint against the Board alleging a violation of Plaintiffs' Procedural Due Process. Plaintiffs are composed of the Center for Coalfield Justice ("CCJ") and the Washington Branch NAACP ("Washington NAACP"), both non-profit organizations, as well as seven named voter plaintiffs.[16]

On July 3rd, 2024, Plaintiffs filed a motion for a preliminary injunction. Parties appeared before this Court on July 9th, 2024, to present this motion and engaged in a scheduling conference to expedite this matter. As a result, no ruling was made on this motion and the parties submitted a joint stipulation which was confirmed by this Court permitting the Republican National Committee and the Republican Party of Pennsylvania ("Republican Intervenors") to intervene. The Joint Stipulation also agreed that the matter would be settled through motions for summary judgment and set forth a schedule for motions, briefs, response, and a stipulation of facts to be submitted to the Court. On July 26th, per the joint stipulation order, the parties filed a Joint Stipulation of Facts along with Motions for Summary Judgment and accompanying briefs. This Court heard Argument

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[12] *Id.* ¶ 46.
[13] *Id.* ¶ 49-50.
[14] *Id.* ¶ 51-52.
[15] *Id.* ¶ 52.
[16] *Id.* ¶ 1-4, 7-15.

on August 5th, 2024, regarding the motions for Summary Judgment filed by the Plaintiffs, Board, and Republican Intervenors, and this opinion and order follows.

DISCUSSION

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."[17] "As the Supreme Court of the United States has explained, the right to vote comprises not just 'the right of qualified voters within a state to cast their ballots,' but also the right 'to have their ballots counted.'"[18]

"A trial court should grant summary judgment only in cases where the record contains no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."[19] The trial court "must accept as true all well-pleaded facts in the non-moving party's pleadings, and give to [them] the benefit of all reasonable inferences to be drawn therefrom."[20] "[T]he court may grant summary judgment only when the right to such a judgment is clear and free from doubt."[21] "If there is evidence that would allow a fact-finder to render a verdict in favor of the non-moving party, then summary judgment should be denied."[22]

Further, to be awarded a permanent injunction, the party seeking relief must establish "(1) that his right to relief is clear, (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages, and (3) that greater injury will result from refusing rather than granting

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[17] *Pennsylvania Democratic Party v. Boockvar,* 662 Pa. 39, 238 A.3d 345, 386-87 (2020).
[18] *Id.* at 387.
[19] *Bourgeois v. Snow Time, Inc.*, 242 A.3d 637, 649-50 (Pa. 2020), *citing Summers v. Certainteed Corporation*, 997 A.2d 1152, 1159 (Pa. 2010).
[20] *Jefferson v. State Farm Ins. Companies*, 551 A.2d 283, 284 (Pa. Super. 1988).
[21] *Erie Insurance Exchange v. Moore*, 175 A.3d 999, 1008 (Pa. Super. 2017)(citations omitted).
[22] *Reinoso v. Heritage Warminster SPE LLC*, 108 A.3d 80, 85 (Pa. Super. 2015), *quoting Mull v. Ickes*, 994 A.2d 1137, 1139-40 (Pa. Super. 2010).

the relief requested."[23] "However, unlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief and a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law."[24]

1. Justiciability Issues

Before this Court can determine whether summary judgment should be granted on the merits of the case, issues related to the justiciability of the matter must be addressed.[25] Both the Board and the Republican Intervenors raised the issues of whether the Plaintiffs have standing, and whether the matter is either not yet ripe to be addressed or moot.[26] This Court addresses each issue as follows.

a. Standing

To establish standing, "courts require a plaintiff to demonstrate he or she has been 'aggrieved' by the conduct he or she challenges."[27] "To determine whether the plaintiff has been aggrieved, Pennsylvania courts traditionally examine whether the plaintiff's interest in the outcome of the lawsuit is substantial, direct, and immediate."[28] "A party's interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, a party's interest is immediate when the causal connection with the alleged harm is neither remote nor speculative."[29]

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[23] *City of Philadelphia v. Armstrong*, 271 A.3d 555, 560-61 (Pa. Commw. Ct. 2022) (quoting *Kuznik v. Westmoreland County Board of Commissioners*, 902 A.2d 476, 489 (Pa. 2006)).
[24] *Id.* (*quoting Buffalo Township v. Jones*, 813 A.2d 659, 663-64 (Pa. 2003)).
[25] *See, Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021).
[26] Defendant Washington Cnty. Bd of Elections Motion for Summary Judgment, ¶ 1-5; Intervenor's Motion for Summary Judgment ¶ 5.
[27] *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021).
[28] *Id.*
[29] *Id.*

i. Voters

The Board alleges the voter plaintiffs lack standing because any harm they face is speculative and lacks a causal connection between the harm and relief.[30] Republican Intervenors allege voter plaintiffs lack standing because their interests are no different than any other voter in Washington County.[31] In response, the Plaintiffs argue it is not speculative that if subjected to the Board's policy during the general election,[32] if any errors are made on voter plaintiffs mail-in ballots, they will not know they made an error which caused their ballot to be disqualified or what kind of error was made.[33] Plaintiffs argue there is a direct causal connection between the relief they seek - being provided with information about whether their ballot was segregated due to a disqualifying error, and the harm they seek to address – their vote not counting, because having accurate information about their ballot would allow them to vote a provisional ballot, thereby providing a remedy.[34] Plaintiffs also argue the right to notice they are seeking under due process does not require a concrete relief, rather the pre-deprivation process itself is a form of relief.[35] In response to the arguments presented by the Republican Intervenors, Plaintiffs argue "the fundamental thrust of the 'substantial interest' inquiry is whether the Board's actions have 'some discernible adverse effect' on Voter Plaintiffs' procedural due process rights beyond an 'abstract

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[30] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 18.
[31] Intervenors' Br. in Support of Motion for Summary Judgment, p. 23.
[32] The Board and Republican Intervenors argue that the Board has not yet decided what policy will be in place for the November general election, however, there has been no indication that the policy will be changed and therefore the policy used in the April primary is still in effect. "Past practice in 2023, what was followed in the primary, was again voted and decided to follow in the general election, so based on that, most likely it will be the same." Ostrander Depo. Tr. 127:10-14.
[33] Pl. Omnibus Memo. of Law in Opposition, p. 45.
[34] *Id.* at 53-54.
[35] *Id.* at 54.

interest' in ensuring the Board does not violate the Pennsylvania Constitution" and voter plaintiffs have "concrete, identifiable interests that distinguish them from the public at large."[36]

After considering all the arguments, this Court finds the voter plaintiffs have a substantial interest in protecting their due process rights in the upcoming election. This Court finds the Board's failure to notify the voter plaintiffs as to disqualifying errors deprived qualified electors the ability to challenge the decision made by the canvass board to reject the elector's mail-in packet.[37] Electors also were deprived of their right to have an opportunity to cast a provisional ballot. Finally, this Court finds the voter plaintiffs' interest is immediate as the November general election is only a few months away and voter plaintiffs intend to cast their votes via mail-in packets subject to the Board's actions. As such, this Court finds the voter plaintiffs have standing.

ii. Organizational Standing

The Board and Republican Intervenors both allege the organizational plaintiffs lack standing because "an organization's expenditure of resources alone ordinarily does not confer standing," and an organization cannot "base standing on the diversion of resources from one program to another" and because a causal connection is lacking.[38] Organizational Plaintiffs argue they have established cognizable legal interests in the litigation as the Board's conduct interferes with their ability to conduct their respective missions by forcing them to mitigate the impact of the Board's actions on their members.[39]

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[36] *Id.* at 44. *See also, Wm. Penn Parking Garage, Inc. v. City of Pittsburgh,* 346 A.2d 269, 282 (Pa. 1975); *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009).
[37] This Court notes that the Parties focused on whether there was a causal connection between harm and relief, however, this is not what the "direct" aspect of standing requires. A party's interest "is direct when the asserted **violation** shares a causal connection with the alleged **harm."** *Firearm Owners Against Crime v. Papenfuse,* 261 A.3d 467, 481 (Pa. 2021) (emphasis added).
[38] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 21; Intervenors' Br. in Support of Motion for Summary Judgment, p. 26. *See also, Ball v. Chapman,* 289 A.3d at 19 n.103.
[39] Pl. Omnibus Memo. of Law in Opposition, p. 50-51.

Organizational plaintiffs must establish that their interest in the outcome of the lawsuit is substantial, direct, and immediate, the same as individual plaintiffs. Here, both Organizational Plaintiffs have programs targeted toward increasing civic engagement and voting participation.[40] Unlike members of the general public, the Organizational Plaintiffs business activities were directly interfered with by the Boards actions as they provide voting information to their members and the public in Washington County. Organizational plaintiffs' interests are direct because the Board's actions in failing to provide notice to individuals has interfered with organizational plaintiffs' ability to provide clear and accurate information in their civil engagement programs. Organizational plaintiffs' resources were drawn away from all other initiatives. This interest is immediate as it will remain ongoing through the November general election as organizational plaintiffs work to ensure their members are able to actively participate in the election process. Based on the above reasoning, this Court finds the organizational plaintiffs have standing in this matter.

b. Timing Issues

i. Ripeness

To decide whether the doctrine of ripeness bars consideration of an action, it must be determined "whether the issues are adequately developed for judicial review and what hardships the parties will suffer if review is delayed."[41] Factors in an inquiry as to if the issues are adequately developed include: "whether the claim involves uncertain and contingent events that may not occur as anticipated or at all; the amount of fact finding required to resolve the issue; and whether the parties to the action are sufficiently adverse."[42] "Under the 'hardship' analysis, we may address

[40] Joint Stip. of Facts, ¶ 1, 3.
[41] *Twp. of Derry v. Pennsylvania Dep't of Lab. & Indus.*, 593 Pa. 480, 482, 932 A.2d 56, 58 (2007).
[42] *Id.*

the merits even if the case is not as fully developed as we would like, if refusal to do so would place a demonstrable hardship on the party."[43] "[T]he justiciability doctrines of standing and ripeness are closely related because both may encompass allegations that the plaintiff's harm is speculative or hypothetical and resolving the matter would constitute an advisory opinion."[44] "However, ripeness is distinct from standing as it addresses whether the factual development is sufficient to facilitate a judicial decision."[45]

The Board and Republican Intervenors argue the matter is not ripe as the alleged harm is entirely speculative.[46] Plaintiffs argue the matter is clearly ripe as the procedures put into place by the Board ahead of the April 2024 primary remain in place "unless and until the Board decides to change course."[47] In considering all of the factors and arguments made, this Court finds although the Board may change its policy, the policy used at the April 2024 primary election is still in effect; the parties have stipulated to sufficient factual findings for this Court to resolve the issue, and the parties are sufficiently adverse. Additionally, this Court finds that even if the case could be developed more, doing so would place a hardship on the parties in not having a result in time for the November general election. Therefore, this Court finds that the matter is ripe to be addressed.

ii. Mootness

"[A]t every stage of the judicial process, an actual case or controversy must usually exist to avoid dismissal for mootness."[48] "Moreover, a change in the facts may render a case moot even

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[43] *Id.*
[44] *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 482 (Pa. 2021).
[45] *Id.*
[46] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 18; Intervenors' Br. in Support of Motion for Summary Judgment, p. 19.
[47] Pl. Omnibus Memo. of Law in Opposition, p. 40-42. Plaintiffs point to the fact that in 2023, the Board conducted a vote prior to the May primary but no new vote was held in September in order to continue the policy, therefore while the Board may meet to discuss whether or not to maintain the policy for the November 2024 general election, no vote will be needed unless the policy is being changed.
[48] *Erie Ins. Exch. v. Claypoole*, 673 A.2d 348, 353 (Pa.Super.Ct. 1996).

though it had once been actual."[49] In addition to their claim the case is not ripe, the Board also claims that Plaintiff's case is moot because the SURE-generated emails sent in response to the codes entered by the Election Office are being modified by the Pennsylvania Department of State for the November election.[50] In response, Plaintiffs argue even if this Court were to find the matter moot if the Board could guarantee all voter plaintiffs' votes would be counted in November, it may still consider this matter for two reasons: 1) that the matter is capable of repetition yet evading review, and 2) that the matter is of public importance.[51]

This Court need not consider any exceptions to the mootness doctrine as this Court finds that Plaintiff's claims are not moot. Any changes to the SURE generated emails do not address the issue of plaintiff voters and any other similarly situated individuals being unaware that their mail-in ballots have been segregated and will not be counted due to disqualifying errors.

2. Procedural Due Process

Having determined the matter presented to this Court is justiciable, this Court's analysis shifts to address Plaintiffs' claim that the Board's actions "concealing voters' mail-in ballot status and affirmatively misleading many voters violates Plaintiffs' procedural due process rights."[52]

Under the United States Constitution, no state may "deprive any person of life, liberty, or property, without due process of law."[53] "This axiom of American jurisprudence, termed procedural due process, 'imposes constraints on governmental decisions which deprive individuals' of any of these fundamental rights."[54] "Courts examine procedural due process in two

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[49] *Id.*
[50] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 16-17.
[51] Pl. Omnibus Memo. of Law in Opposition, p. 46.
[52] Pl. Compl. ¶ 153.
[53] U.S. CONST. amend. XIV § 1.
[54] *Washington v. PA Dep't of Corr.*, 306 A.3d 263, 284 (Pa. 2023). *See also*, *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

steps: the first asks whether there is a life, liberty, or property interest with which the state has interfered, and the second examines whether the procedure attendant to that deprivation are constitutionally sufficient."[55]

"[T]he basic elements of procedural due process are 'adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case.'"[56] "Importantly, the right to procedural due process is distinct from the right the government seeks to impair."[57] "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property."[58] Numerous issues related to Plaintiffs' due process claim have been raised by the parties such as whether Plaintiffs' claim is barred by the Legislative Act Doctrine, whether Plaintiffs have a cognizable liberty interest, and whether Plaintiffs' claim has been previously decided under *Pennsylvania Democratic Party v. Boockvar.*[59] This Court addresses each issue and any related matters as follows.

a. Legislative Act Doctrine

"It is well settled that procedural due process concerns are implicated only by adjudications, not by state actions that are legislative in character."[60] The Board and Republican Intervenors argue that Plaintiffs are challenging a purely legislative act by challenging the Board's policy, and therefore their due process claim must fail.[61] In response, Plaintiffs argue they "are challenging the series of individualized determinations the election staff have made and will make

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[55] *S.F. v. Pennsylvania Dep't of Hum. Servs.*, 298 A.3d 495, 510 (Pa. Commw. Ct. 2023). *See also, Kentucky Department of Corrections v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989).
[56] *S.F. v. Pennsylvania Dep't of Hum. Servs.*, 298 A.3d 495, 510 (Pa. Commw. Ct. 2023).
[57] *Washington v. PA Dep't of Corr.*, 306 A.3d 263, 285 (Pa. 2023).
[58] *Id. See also, Carey v. Piphus*, 435 U.S. 247, 259, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978).
[59] 662 Pa. 39, 238 A.3d 345 (2020).
[60] *Small v. Horn*, 554 Pa. 600, 613, 722 A.2d 664, 671 (1998).
[61] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 23-24; Intervenors' Br. in Support of Motion for Summary Judgment, p. 46.

going forward: to set aside a voter's mail ballot because it has a known disqualifying error on the envelope; to miscode that ballot in the SURE system so that the voter never knows the ballot will not count even though there is still time for the voter to preserve their fundamental right to vote; and ultimately to not count the voter's mail ballot."[62]

"Adjudicative agency actions are those that affect one individual or a few individuals, and apply existing laws or regulations to facts that occurred prior to the adjudication. Agency actions that are legislative in character result in rules of prospective effect and bind all, or at least a broad class of, citizens."[63] For example, a bulletin requiring all inmates to wear prison uniforms rather than civilian clothing[64] and a city-wide assessment value increase on taxable property[65] were legislative in character while a tax for the cost of paving a road abutting a group of landowners property[66] and a Department of Corrections policy for deducting funds from inmates accounts[67] were adjudicative.

Here, like in *Londoner* or *Washington*, the process of elections office staff screening and segregating mail-in ballots for those with disqualifying errors and then coding the ballot in the SURE system in a manner which provides no way for an individual voter to know that their ballot has been segregated affects a small portion of all mail-in voters and results in an adjudicative action.

Further, the Supreme Court of Pennsylvania has established that "a local ordinance is invalid if it stands 'as an obstacle to the execution of the full purposes and objectives' of the

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[62] Pl. Omnibus Memo. of Law in Opposition, p. 14.
[63] *Sutton v. Bickell*, 656 Pa. 278, 286, 220 A.3d 1027, 1032 (2019), quoting *Small v. Horn*, 554 Pa. 600, 613 n.12, 722 A.2d 664, 671 n.12 (1998).
[64] *See, Small v. Horn*, 554 Pa. 600, 722 A.2d 664 (1998).
[65] *See, Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).
[66] *See, Londoner v. City & Cnty. of Denver*, 210 U.S. 373, 28 S. Ct. 708, 52 L. Ed. 1103 (1908).
[67] *See, Washington v. PA Dep't of Corr.*, 306 A.3d 263 (Pa. 2023).

General Assembly, as expressed in a state law."[68] "To determine whether the county has created such an obstacle, we assess the effect of the challenged ordinance on the proper functioning and application of the state enactment."[69] "If the local ordinance impedes the operation of the state statute, the ordinance is preempted."[70] "County legislation tailored to the particular locality is permitted, if the enactment merely aids and furthers the goals of the state statute."[71] "But, 'local legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow.'"[72]

As this Court finds that the Board's policy is an adjudicative action and that this Court may properly examine whether the Board's policy is valid under state law, this Court finds that the Plaintiffs' claims are not barred by the Legislative Acts Doctrine.

b. Liberty Interest at stake in Due Process

"In order to determine whether a constitutional violation has occurred, a determination must initially be made that a protected liberty interest exists and, if so, what process is due."[73] "Protected liberty interests may be created by either the Due Process Clause itself or by state law."[74] The Board and Republican intervenors argue that Plaintiffs lack an underlying liberty interest protected by due process as no Pennsylvania Court has ever held that voting is a liberty interest protected by due process.[75] Plaintiffs argue "[t]his position is directly at odds with the

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[68] *Fross v. Cnty. of Allegheny*, 610 Pa. 421, 438, 20 A.3d 1193, 1203 (2011) (quoting *Holt's Cigar Co. v. City of Philadelphia*, 608 Pa. 146, 10 A.3d 902, 907 (2011)).
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.* (quoting *Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont*, 600 Pa. 207, 964 A.2d 855, 862 (2009)).
[73] *Wilder v. Dep't of Corr.*, 673 A.2d 30, 32 (Pa. Commw. Ct. 1996).
[74] *Id. See also, Sandin v. Conner,* 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995); *Wolff v. McDonnell,* 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).
[75] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 25-28; Intervenors' Br. in Support of Motion for Summary Judgment, p. 39-40.

Pennsylvania Supreme Court's recognition of the inextricable link between the Pennsylvania Constitution's enumerated fundamental rights and the interests protected by the Due Process Guarantee. The Board's view also flies in the face of the origins of the right to vote in the constitution, and its place in the Declaration of Rights alongside entitlements to other individual freedoms."[76]

Here, this Court finds that it is the right to challenge the decisions made by the county board at the canvass that constitute a liberty interest. Under 25 P.S. § 3157, "any person aggrieved by any order or decision of any county board regarding the computation or canvassing of the returns of any primary or election…may appeal therefrom within two days after such order or decision shall have been made…setting forth why he feels that an injustice has been done, and praying for such order as will give him relief." At deposition, Director of the Washington County Board of Elections, Melanie Ostrander, confirmed that electors have the right to challenge the canvass board:

> Q: For someone whose ballot is not counted because it's missing a signature or a date, do they have a right to challenge that action or appeal from that decision if you know?
> A: During the canvass, the voter can challenge a decision made by the canvass board.

Protected liberty interests for purposes of procedural due process may be created by state law. Here, Pennsylvania has created a statutory right to receive due process regarding decisions made by the county board canvassing election returns. Additionally, under 25 P.S. 3150.16(2), electors have a statutory right to cast a provisional ballot if they are not shown on the district register as having voted. It is these protected liberty interests at issue in Plaintiffs complaint. As such, this Court must determine what process is due and whether Constitutional violations have occurred.

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[76] Pl. Omnibus Memo. of Law in Opposition, p. 17-18.

c. *Anderson/Burdick* test vs *Mathews* test

Having found that the Plaintiffs set forth a cognizable liberty interest for procedural due process, this Court will proceed to a due process analysis.

In examining whether the procedures associated with any deprivation of Plaintiffs' right to challenge canvass decisions made by the canvass board are constitutionally sufficient or whether Plaintiffs' due process rights have been violated, this Court must first decide upon the applicable standard. Plaintiffs argue that the applicable test is a three-part balancing test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976).[77] The *Mathews* test "determine[s] what procedural due process requires in a given context...balanc[ing] (1) the private interest affected, (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards, and (3) the governmental interest, including costs and administrative burdens of additional procedures."[78] The Board argues that the appropriate test is the *Anderson/Burdick* framework.[79] Under *Anderson/Burdick*, "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'"[80] "But when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of

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[77] Pl. Omnibus Memo. of Law in Opposition, p. 22-25.
[78] *C.S. v. Commonwealth, Dep't of Hum. Servs., Bureau of Hearings & Appeals*, 184 A.3d 600, 607 (Pa. Commw. Ct. 2018).
[79] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 35-39. This Court notes the Republican Intervenors do not make this argument.
[80] *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Norman v. Reed*, 502 U.S. 279, 289, 112 S.Ct. 698, 705, 116 L.Ed.2d 711 (1992)).

voters, 'the State's important regulatory interests are generally sufficient to justify the restrictions."[81]

Considering all of the parties' arguments, this Court finds that the appropriate test is *Mathews.* As such, this Court balances (1) the private interest affected, (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards, and (3) the governmental interest, including costs and administrative burdens of additional procedures.[82]

d. Free and Fair Elections vs Due Process

Further, the Board and Republican Intervenors argue if this Court finds that Plaintiffs' claim has not yet been barred by the preceding reasons discussed above, it is precluded by the Pennsylvania Supreme Court's decision in *Pennsylvania Democratic Party v. Boockvar,* 662 Pa. 39, 238 A.3d 345 (2020).[83] The Board and Republican Intervenors argue "the Pennsylvania Supreme Court has found that no constitutional, statutory, or legal right to notice and an opportunity to cure a defective mail-in ballot exists."[84] In *Pennsylvania Democratic Party v. Boockvar,* Petitioners filed suit against Secretary of the Commonwealth and all 67 County Election Boards regarding a number of issues related to mail-in voting.[85] The issue raised in *Pennsylvania Democratic Party v. Boockvar* relevant here is whether Boards of Election should be required to "contact qualified electors whose mail-in or absentee ballots contain minor facial defects resulting from their failure to comply with the statutory requirements for voting by mail, and provide them

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[81] *Id.*
[82] *C.S. v. Commonwealth, Dep't of Hum. Servs., Bureau of Hearings & Appeals*, 184 A.3d 600, 607 (Pa. Commw. Ct. 2018).
[83] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 28-29; Intervenors' Br. in Support of Motion for Summary Judgment, p. 27-29.
[84] *Id.* at 28 (citing *Pennsylvania Democratic Party v. Boockvar,* 662 Pa. 39, 238 A.3d 345, 372-74 (2020)). See also, Intervenors' Br. in Support of Motion for Summary Judgment, p. 27.
[85] 662 Pa. 39, 51, 238 A.3d 345, 352 (2020).

with an opportunity to cure those defects."[86] In supporting their claims, Petitioner in *Pennsylvania Democratic Party v. Boockvar* relied upon the Free and Equal Elections Clause.[87] The Court in *Pennsylvania Democratic Party v. Boockvar* denied Petitioner's claim on this matter concluding that "the Boards are not required to implement a 'notice and opportunity to cure' procedure for mail-in and absentee ballots that voters have failed out incompletely or incorrectly."[88] The Court further stated "[p]ut simply, as argued by the parties in opposition to the requested relief, Petitioner has cited no constitutional or statutory basis that would countenance imposing the procedure Petition seeks to require…"[89]

Unlike in *Pennsylvania Democratic Party v. Boockvar*, Plaintiffs here do not argue that relief should be granted under the Free and Equal Elections Clause, rather the actions of the Board are a violation of Plaintiffs due process rights. As the Petitioners in *Pennsylvania Democratic Party v. Boockvar* did not raise due process and the Pennsylvania Supreme Court therefore did not conduct a due process analysis, their holding does not bar Plaintiffs' claim before this Court.

i. Notice under 25 P.S. § 3157 vs "notice and opportunity to cure"

Additionally, the matter before this Court is distinguishable from *Pennsylvania Democratic Party v. Boockvar* as Plaintiffs are not asking this Court to direct the Board to adopt a "notice and opportunity to cure" policy.[90] Instead "Plaintiffs are asking for pre-deprivation notice under Article I, Section 1 of the Pennsylvania Constitution so voters have an opportunity to exercise their right to vote."[91] As set forth above, "the basic elements of procedural due process are 'adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and

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[86] *Pennsylvania Democratic Party,* 662 Pa. 39, 83, 238 A.3d 345, 372 (2020).
[87] *Id.* at 84, 372. *See also* Pa. Const. art. I, § 5.
[88] *Id.* at 86, 374.
[89] *Id.*
[90] Pl. Omnibus Memo. of Law in Opposition, p. 5.
[91] *Id.* at 5-6.

impartial tribunal having jurisdiction over the case.'"[92] As such, the issue before this Court is merely whether electors have a right to know that their vote will not be counted and be afforded the opportunity to challenge the canvass board's decision. This case does not attempt to overturn or contradict the holding of *Pennsylvania Democratic Party v. Boockvar* as it relates to the Free and Fair Election Clause and "notice and opportunity to cure."

Here, Pennsylvania Election law provides electors a clear and unequivocal right to challenge the decisions made by the canvass board under 25 P.S. § 3157. As set forth above, "any person aggrieved by any order or decision of any county board regarding the computation or canvassing of the returns of any primary or election…may appeal therefrom within two days after such order or decision shall have been made…setting forth why he feels that an injustice has been done, and praying for such order as will give him relief."[93] This is the private interest affected under *Mathews*. The risk of erroneous deprivation of that interest is high as electors have no notice that their ballot has been segregated and presumptively will not be counted. The burden on the government is low as there is a framework in place where a different entry code can be placed into a computer to provide notice to an elector that their ballot will not be counted and is subject to challenge. Also, the great staff in the elections office have proven to be more than capable of contacting electors based on the Board's 2023 policy. Weighing all of these factors, this Court finds that under the *Mathews* test, the Board has violated Plaintiffs procedural due process.

In the alternative, if this Court were to evaluate Plaintiffs' due process claims under the *Anderson/Burdick* framework as proposed by the Board, the result remains the same. Here, the Board's regulation burdens Plaintiffs' First and Fourteenth Amendment rights by depriving them of any notice whatsoever that their ballot – their vote – will not be counted. This lack of notice

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[92] *S.F. v. Pennsylvania Dep't of Hum. Servs.*, 298 A.3d 495, 510 (Pa. Commw. Ct. 2023).
[93] 25 P.S. § 3157.

further deprives Plaintiffs any meaningful ability to challenge this decision.[94] This Court finds no state interest of compelling importance supported by this regulation. Therefore, even under the test proposed by the Board, the Board's regulation fails as it violates Plaintiffs' due process rights.

Therefore, this Court finds that there is no issue of material fact and Plaintiffs' are entitled to judgment as a matter of law and grants Plaintiffs' motion for summary judgment on this issue.

ii. **"Cure" vs Provisional ballot and the Pennsylvania Election Law under 25 P.S. § 3150.11, 25 P.S. § 3150.16, and 25 P.S. § 3050.**

The Board and Republican Intervenors argue that the relief sought by plaintiffs is illusory as provisional ballots cannot be used to "cure" deficient mail-in ballots.[95] The Board and Republican Intervenors also argue any grant of relief in favor of the Plaintiffs would essentially force this Court to rewrite election law.[96] Plaintiffs argue voting a provisional ballot is not "curing" as "the federal Help America Vote Act ("HAVA") and the Pennsylvania Election Code have long mandated the availability of provisional voting as a distinct failsafe to prevent voter disenfranchisement."[97]

According to Miriam Webster dictionary, "to cure" is defined as "1) to restore to health, soundness, or normality, 2) to bring about recovery from, or 3) to deal with in a way that eliminates or rectifies."[98] For the 2023 election cycle, Washington County adopted a voluntary "notice and cure" policy. Under this policy, if a voter's ballot was segregated for a disqualifying error, such as a missing or incorrect date, or a missing signature, the voter could come into the elections' office

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[94] The Board argued at the hearing that any elector wishing to challenge whether their ballot will count or not is able to attend the canvass board meeting which is advertised on the Board's website. This Court likens this procedure to conducting a sheriff's sale of property without any advertisement of which properties are to be sold and expecting any concerned individual to appear to ensure that their property is not one affected.
[95] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 24-26; Intervenors' Br. in Support of Motion for Summary Judgment, p. 30-34.
[96] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 14-15, 19; Intervenors' Br. in Support of Motion for Summary Judgment, p. 29, 44.
[97] Pl. Omnibus Memo. of Law in Opposition, p. 9.
[98] *Cure*, Miriam Webster Dictionary, https://www.merriam-webster.com/dictionary/cure, accessed August 14th, 2024.

and sign the declaration envelope to resolve a missing signature or fill out a new ballot and declaration envelope to resolve a missing or incorrect date.[99] These methods enabled voters to restore or recover their mail-in ballot. On the other hand, a provisional ballot is a separate ballot entirely. "A provisional ballot records your vote while the county board of elections determines whether it can be counted."[100] Further, in *Pennsylvania Democratic Party v. Boockvar,* the Court makes no mention of provisional ballots, rather it agreed with respondents that procedures to "cure" minor or facial defects are best left to the legislature to address the precise contours.[101] Upon this analysis, this Court finds that the process of a voter submitting a provisional ballot is not a "cure" of their deficient mail-in packet, but an altogether independent action. It is important to point out that are proper safeguards in place to ensure double voting does not occur and that the integrity of our elections is upheld.

Nevertheless, the Board and Republican Intervenors argue that the Election Code prohibits a provisional ballot from being counted if the elections office has received and found a voter's mail-in ballot deficient.[102] The Elections code addresses mail-in voting and provisional ballots in primarily three Sections: 25 P.S. § 3150.11, 25 P.S. § 3150.16, and 25 P.S. § 3050. Under 25 P.S. § 3150.11(a), "a qualified mail-in elector shall be entitled to **vote** by an official mail-in ballot in any primary or election held in this Commonwealth in the manner provided under this article."[103] 25 P.S. § 3150.16 dictates that "(1) [a]ny elector who receives and **votes** a mail-in ballot under section 1301-D1[104] shall not be eligible to vote at a polling place on election day. The district

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[99] Ostrander Depo. Tr. 40:1-11, 42:22-43:6.

[100] Voting by Provisional Ballot, Official Website of the Commonwealth of Pennsylvania, https://www.pa.gov/en/agencies/vote/voter-support/provisional-ballot.html, accessed August 14th, 2024.

[101] 662 Pa. 39, 83-86, 238 A.3d 345, 372-74 (2020).

[102] Washington Cnty. Bd of Elections Br. in Support of Motion for Summary Judgment, p. 24; Intervenors' Br. in Support of Motion for Summary Judgment, p. 32.

[103] Emphasis added.

[104] 25 P.S. § 3150.11.

register at each polling place shall clearly identify electors who have received and **voted** mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who **voted** a mail-in ballot to vote at the polling place and (2) An elector who requests a mail-in ballot and who is not shown on the district register as having **voted** may vote by provisional ballot under section 1210(a.4)(1)[105]."[106] Finally under 25 P.S. § 3050(5)(ii)(F), "[a] provisional ballot shall not be counted if: the elector's absentee ballot or mail-in ballot is timely **received** by a county board of elections."[107]

When read individually, each statute appears clear and unambiguous, however, reading them *in pari materia* they appear to conflict, and this Court must examine further to determine if ambiguity truly exists. "A statute is ambiguous when there are at least two reasonable interpretations of the text."[108] In construing and giving effect to the text, "'we should not interpret statutory words in isolation, but must read them with reference to the context in which they appear.'"[109] The United States Supreme Court also takes a contextual approach in assessing statutes and in determining predicate ambiguity.[110]

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[105] 25 P.S. § 3150.11.
[106] Emphasis added.
[107] Emphasis added.
[108] *A.S. v. Pennsylvania State Police*, 636 Pa. 403, 418-19, 143 A.3d 896, 905-06 (2016). *See Freedom Med. Supply,* 131 A.3d at 984; *Warrantech Consumer Prod. Servs. v. Reliance Ins. Co. in Liquidation,* 626 Pa. 218, 96 A.3d 346, 354–55 (2014); *Delaware County v. First Union Corp.,* 605 Pa. 547, 992 A.2d 112, 118 (2010).
[109] *Id.* at 420, 906.
[110] *See generally King v. Burwell,* —— U.S. ——, 135 S.Ct. 2480, 2489, 192 L.Ed.2d 483 (2015) ("If the statutory language is plain, we must enforce it according to its terms. But oftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, **we must read the words in their context and with a view to their place in the overall statutory scheme**." (internal quotation marks and citations omitted and emphasis added)); *Yates v. United States,* —— U.S. ——, 135 S.Ct. 1074, 1081–82, 191 L.Ed.2d 64 (2015) ("Whether a statutory term is unambiguous, however, does not turn solely on dictionary definitions of its component words. Rather, '[t]he plainness or ambiguity of statutory language is determined [not only] by reference to the language itself, [but as well by] the specific context in which that language is used, and the broader context of the statute as a whole.' Ordinarily, a word's usage accords with its dictionary definition. In law as in life, however, the same words, placed in different contexts, sometimes mean different things." (internal citations omitted)).

"The Statutory Construction Act provides that the object of all statutory interpretation 'is to ascertain and effectuate the intention of the General Assembly.'"[111] "Generally, the best expression of the General Assembly's intent 'is found in the statute's plain language.'"[112] "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."[113] "Moreover, 'we should not insert words into [a statute] that are plainly not there.'"[114] "Only in instances of ambiguous statutory language 'may courts consider statutory factors to discern legislative intent.'"[115] "Words and phrases shall be construed according to rules of grammar and according to their common and approved usage," though "technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in [the Statutory Construction Act] shall be construed according to such peculiar and appropriate meaning or definition."[116] "We also presume that 'the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable,' and that 'the General Assembly intends the entire statute to be effective and certain.'"[117]

Here, the statutory scheme under 25 P.S. § 3150.11, 25 P.S. § 3150.16, and 25 P.S. § 3050 is ambiguous as 25 P.S. § 3150.16(2) provides that "[a]n elector who requests a mail-in ballot and who is not shown on the district register as having **voted** may vote by provisional ballot" while 25 P.S. § 3050 states that "[a] provisional ballot shall not be counted if: the elector's absentee ballot or mail-in ballot is timely **received** by a county board of elections." There is no argument that "received" means when the ballot is delivered by mail to the elections office or brought to the

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[111] *Commonwealth v. Coleman*, 285 A.3d 599, 605 (Pa. 2022), citing 1 Pa. C.S. § 1921(a).
[112] *Id.* citing *Commonwealth v. Howard*, —— Pa. ——, 257 A.3d 1217, 1222 (2021).
[113] 1 Pa. C.S. § 1921(b).
[114] *Commonwealth v. Coleman*, 285 A.3d 599, 605 (Pa. 2022), citing *Frazier v. Workers' Comp. Appeal Bd. (Bayada Nurses, Inc.)*, 616 Pa. 592, 52 A.3d 241, 245 (2012).
[115] *Id.* citing *Commonwealth v. Howard*, —— Pa. ——, 257 A.3d 1217, 1222 (2021).
[116] 1 Pa. C.S. § 1903(a).
[117] *Berner v. Montour Twp. Zoning Hearing Bd.*, 655 Pa. 137, 217 A.3d 238, 245 (2019) (quoting 1 Pa. C.S. § 1922(1)-(2)). *Commonwealth v. Coleman*, 285 A.3d 599, 605 (Pa. 2022).

elections office in person. The meaning of "voted" is not so straightforward. The Board argues that an elector has "voted" a mail-in ballot when they remit it either by placing it in the mail or handing it over at the elections office regardless of any possible defect. However, common sense meaning of the word "voted" denotes an expectation that the opinions expressed through that vote will be counted.[118]

When an elector votes at a polling place, they know their vote is counted once their paper ballot is scanned into the machine. To the contrary, mail-in packets with a disqualifying error are never opened and the ballot remains in the packet. It is clear that an elector whose mail-in packet is deemed to have a disqualifying error did not vote.

Nonetheless, this Court finds that "accept[ing] as true all well-pleaded facts in the [Board and Republican Intervenor's] pleadings, and [giving] [them] the benefit of all reasonable inferences to be drawn therefrom" summary judgment is inappropriate, and the Board and Republican Intervenors' should have the opportunity to explore this issue further.[119]

Although, summary judgment is denied on this issue, this Court finds that a permanent injunction is appropriate. To be awarded a permanent injunction, the party seeking relief must establish "(1) that his right to relief is clear, (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages, and (3) that greater injury will result from refusing rather than granting the relief requested."[120] "However, unlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief and a court may issue a final

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[118] *See,* 52 USCA § 10101(e) ("When used in this subsection, the word "vote" includes **all action necessary to make a vote effective** including, but not limited to, registration or other action required by State law prerequisite to voting, **casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast** with respect to candidates for public office and propositions for which votes are received in an election.") (emphasis added).

[119] *Jefferson v. State Farm Ins. Companies*, 551 A.2d 283, 284 (Pa. Super. 1988).

[120] *City of Philadelphia v. Armstrong*, 271 A.3d 555, 560-61 (Pa. Commw. Ct. 2022) (quoting *Kuznik v. Westmoreland County Board of Commissioners*, 902 A.2d 476, 489 (Pa. 2006)).

injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law."[121]

Here, this Court finds Plaintiffs have established a right to relief, an injunction is necessary to avoid an injury that cannot be compensated by damages, and greater injury will result by the refusal of the relief requested. As such, this Court finds the most uniform resolution is to GRANT a preliminary injunction as requested by Plaintiffs and directs that the elections office must properly document in the poll books that the elector whose mail-in packet is segregated for a disqualifying error has not "voted" in accordance with 25 P.S. § 3150.16 and choose the most appropriate selection in the SURE system to reflect as such.[122]

CONCLUSION

For the reasons set forth above, this Court finds there are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law regarding their right to notice regarding their ballot status in order to challenge the canvass board's decisions. As such, Plaintiffs' motion for summary judgment is GRANTED in that regard. Defendant Washington County Board of Elections is hereby ordered to notify any elector whose mail-in packet is segregated for a disqualifying error, so the voter has an opportunity to challenge (not cure) the alleged defects. The Washington County Board of Elections shall input the accurate status of the mail-in packet in the SURE system and provide the status to the elector if requested.

This Court finds that as there are genuine issues of material fact regarding all other matters, therefore, the remainder of the motion for summary judgment filed by the Plaintiffs, as well as the motions for summary judgment filed by Defendant Washington County Board of Elections and

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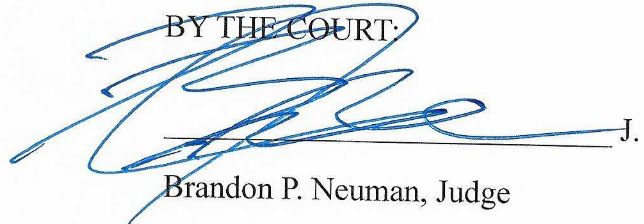
[121] *Id.* (*quoting Buffalo Township v. Jones*, 813 A.2d 659, 663-64 (Pa. 2003)).
[122] This Court acknowledges that this injunction will not provide relief for *every* elector, however, it is the most uniform resolution available.

Intervenors Republican National Committee and Republican Party of Pennsylvania are all DENIED. Plaintiffs' request for a permanent injunction is GRANTED and Defendant Washington County Board of Elections shall properly document in the poll books that the elector whose mail-in packet is segregated for a disqualifying error has not "voted" in accordance with 25 P.S. § 3150.16 and choose the most appropriate selection in the SURE system to reflect as such.

BY THE COURT:



_______________________________J.

Brandon P. Neuman, Judge